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**Introduced by Senator Dunn**

February 21, 2003

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An act to add Part 13 (commencing with Section 2698) to Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 796, as introduced, Dunn. Employment.

Under existing law, the Labor and Workforce Development Agency and its departments, divisions, commissions, boards, agencies, or employees may assess and collect penalties for violations of the Labor Code.

This bill would allow aggrieved employees to bring civil actions to recover these penalties, if the agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions would be distributed 50% to the General Fund, 25% to the agency for education, to be available for expenditure upon appropriation by the Legislature, and 25% to the aggrieved employee. In addition, the aggrieved employee would be authorized to recover attorney's fees and costs. For any violation of the code for which no civil penalty is otherwise established, the bill would establish a civil penalty.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

1 (a) Adequate financing of essential labor law enforcement  
2 functions is necessary to achieve maximum compliance with state  
3 labor laws in the underground economy and to ensure an effective  
4 disincentive for employers to engage in unlawful and  
5 anti-competitive business practices.

6 (b) Although innovative labor law education programs and  
7 self-policing efforts by industry watchdog groups may have some  
8 success in educating some employers about their obligations under  
9 state labor laws, in other cases the only meaningful deterrent to  
10 unlawful conduct is the vigorous assessment and collection of civil  
11 penalties as provided in the Labor Code.

12 (c) Staffing levels for state labor law enforcement agencies  
13 have, in general, declined over the last decade and are likely to fail  
14 to keep up with the growth of the labor market in the future.

15 (d) It is therefore in the public interest to provide that civil  
16 penalties for violations of the Labor Code may also be assessed and  
17 collected by aggrieved employees acting as private attorneys  
18 general, while also ensuring that state labor law enforcement  
19 agencies' enforcement actions have primacy over any private  
20 enforcement efforts undertaken pursuant to this act.

21 SEC. 2. Part 13 (commencing with Section 2698) is added to  
22 Division 2 of the Labor Code, to read:

23  
24 PART 13. THE LABOR CODE PRIVATE ATTORNEYS  
25 GENERAL ACT OF 2004  
26

27 2698. This part shall be known and may be cited as the Labor  
28 Code Private Attorneys General Act of 2004.

29 2699. (a) Notwithstanding any other provision of law, any  
30 provision of this code that provides for a civil penalty to be  
31 assessed and collected by the Labor and Workforce Development  
32 Agency or any of its departments, divisions, commissions, boards,  
33 agencies, or employees, for a violation of this code, may, as an  
34 alternative, be recovered through a civil action.

35 (b) For all provisions of this code except those for which a civil  
36 penalty has already been established, there is established a civil  
37 penalty for a violation of these provisions, as follows:

38 (1) If no criminal penalty amount has been established for a  
39 violation of the provision, the civil penalty is one hundred dollars  
40 (\$100) per employee per pay period for the initial violation and

1 two hundred dollars (\$200) per employee per pay period for each  
2 subsequent violation. If the person does not employ one or more  
3 employees, the civil penalty is five hundred dollars (\$500).

4 (2) If a criminal penalty has been established for a violation of  
5 the provision, the civil penalty is the amount of the criminal  
6 penalty, or one hundred dollars (\$100) per employee per pay  
7 period for the initial violation and two hundred dollars (\$200) per  
8 employee per pay period for each subsequent violation, whichever  
9 is greater. If the person does not employ one or more employees,  
10 the civil penalty shall be the amount of the criminal penalty or five  
11 hundred dollars (\$500), whichever is greater.

12 (c) An aggrieved employee may recover the civil penalty  
13 described in subdivision (b) in a civil action filed on behalf of  
14 himself or herself or others. Any employee who prevails, in whole  
15 or in part, in any action shall be entitled to an award of reasonable  
16 attorney's fees and costs. Nothing in this section shall operate to  
17 limit an employee's right to pursue other remedies available under  
18 state or federal law, either separately or concurrently with an  
19 action taken under this section.

20 (d) No action may be maintained under this section by an  
21 aggrieved employee if the agency or any of its departments,  
22 divisions, commissions, boards, agencies, or employees, on the  
23 same facts and theories, cites a person for a violation of the code  
24 and initiates proceedings to collect applicable penalties.

25 (e) Civil penalties recovered by aggrieved employees shall be  
26 distributed as follows: 50 percent to the General Fund, 25 percent  
27 to the Labor and Workforce Development Agency for education  
28 of employers and employees about their rights and responsibilities  
29 under this code, available for expenditure upon appropriation by  
30 the Legislature, and 25 percent to the aggrieved employees.

